



COUNTY OF LOS ANGELES

CLAIMS BOARD

500 WEST TEMPLE STREET

LOS ANGELES, CALIFORNIA 90012

MEMBERS OF THE BOARD

May 19, 2003

Maria M. Oms
Auditor-Controller
Lloyd W. Pellman
Office of the County Counsel
Rocky Armfield
Chief Administrative Office

Honorable Board of Supervisors
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Re: **The Estate of Antonio Galvan-Ruiz, Leslie Galvan, Rafael Antonio Galvan, by and through their Guardian Ad Litem Martha Morales v. County of Los Angeles**
Los Angeles Superior Court Case No. BC 240 915

Dear Supervisors:

The Claims Board recommends that:

1. The Board authorize settlement of the above-entitled action in the amount of \$300,000.00.
2. The Auditor-Controller be directed to draw warrants to implement this settlement from the Department of Health Services.

Enclosed is the settlement request and a summary of the facts of the case.

The Litigation Report, including the Corrective Action Report, is being transmitted to you under separate cover by the Department of Health Services.

Return the executed, adopted copy to Frances Lunetta, Suite 648 Kenneth Hahn Hall of Administration, Extension 4-1754.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Maria M. Oms", is written over a horizontal line.

Maria M. Oms, Chairperson
Los Angeles County Claims Board

MMO/fsl

Enclosure

MEMORANDUM

May 12, 2003

TO: LOS ANGELES COUNTY CLAIMS BOARD

FROM: TODD C. THEODORA, Esq.
Stephan, Oringer, Richman & Theodora

OWEN L. GALLAGHER
Principal Deputy County Counsel

RE: The Estate of Antonio Galvan-Ruiz, Leslie Galvan, Rafael Antonio Galvan, by and through their Guardian Ad Litem, Martha Morales v. County of Los Angeles
Los Angeles Superior Court Case No. BC240915

DATE OF
INCIDENT: June 28, 1999

AUTHORITY
REQUESTED: \$300,000

COUNTY
DEPARTMENT: DEPARTMENT OF HEALTH SERVICES

CLAIMS BOARD ACTION:

☐

Approve

☐

Disapprove

☐

Recommend to Board of
Supervisors for Approval

_____, Chief Administrative Office
ROCKY A. ARMFIELD

_____, County Counsel
LLOYD W. PELLMAN

_____, Auditor-Controller
MARIA M. OMS

on _____, 2003

SUMMARY

This is a recommendation to settle for \$300,000 the wrongful death lawsuit brought by The Estate of Antonio Galvan-Ruiz, Leslie Galvan (minor daughter), and Rafael Antonio Galvan (minor son), for the death of Antonio Galvan as the result of treatment he received while hospitalized at LAC+USC Medical Center on June 28, 1999. The State, having paid \$186,325.57 for the provision of Medi-Cal care, has a claim for reimbursement, which will be settled by Drager Medical (co-defendant) and GE Clinical Services (co-defendant).

LEGAL PRINCIPLES

The County is liable for the failure of its hospital and medical staff to provide services consistent with the appropriate standard of care for the circumstances encountered.

SUMMARY OF FACTS

On June 24, 1999, Antonio Galvan, a 36-year-old man, was seen at LAC+USC Medical Center for treatment of a fracture of the bones of his right ankle. A decision was made to repair the fracture by restoring the bones to their normal position by exposing the skeletal parts involved (open reduction) and fastening them in a fixed position with pins and screws (internal fixation).

On June 28, 1999, at 1:30 a.m., Antonio Galvan arrived in the operating room for open reduction of his right ankle fracture. At 1:40 a.m., paralytic agents were administered, and a breathing tube (endotracheal [ET] tube) was inserted through Antonio Galvan's mouth, past the voice box to the breathing passages of the lungs (endotracheal intubation). The ET tube was attached to an anesthesia machine used to administer oxygen and provide ventilation through the ET tube. The anesthesia machine was manufactured by Drager Medical (co-defendant), and maintained and serviced by GE Clinical Services (co-defendant) pursuant to a maintenance agreement with the County.

It was noted that immediately after being intubated, the maximum percentage of oxygen chemically combining with Antonio Galvan's red blood cells (oxygen saturation) began to decline. In addition, a device used to monitor the amount of carbon dioxide being exhaled through the ET tube (end-tidal carbon dioxide monitor) registered zero. Medical personnel suspected that the ET tube had been improperly placed into the opening leading to the stomach (esophageal intubation). The ET tube was removed (extubation) and reinserted. However, Antonio Galvan's oxygen saturation continued to decline. Medical personnel confirmed that the ET tube was correctly positioned in Antonio Galvan's breathing passage, and suspected that his declining oxygen saturation levels might be due to a blockage (occlusion) of the arteries leading from the heart to the lungs (pulmonary embolism), an abnormal contraction of the smooth muscles of the breathing passages of the lungs (bronchospasm), or an adverse drug reaction.

However, medical personnel did not consider that Antonio Galvan's declining oxygen saturation levels might be due to a failure of the anesthesia machine to deliver oxygen and provide ventilation through the ET tube.

Additional medical personnel arrived in the room, and the ET tube was again removed and correctly reinserted into Antonio Galvan's breathing passage. However, his oxygen saturation levels declined to zero. Medical personnel continued to suspect that Antonio Galvan was suffering from a pulmonary embolism or a bronchospasm. Medical personnel did not, however, consider a failure of the anesthesia machine to deliver oxygen and provide ventilation through the ET tube.

At 1:45 a.m., medical personnel started immediate resuscitative efforts, and restoration of heart and lung function using artificial respiration and manual closed chest compression (cardiopulmonary resuscitation [CPR]) was initiated.

At about 2:00 a.m., medical personnel determined that the anesthesia machine was not delivering oxygen and providing ventilation through the ET tube. The ET tube was disconnected from the anesthesia machine, and medical personnel provided oxygen and ventilation to Antonio Galvan with a hand-held mechanical ventilation device (ambu bag), which returned Antonio Galvan's oxygen saturation levels to normal. However, Antonio Galvan suffered an extreme loss of oxygen (hypoxia), resulting in severe brain damage (hypoxic encephalopathy).

Antonio Galvan remained in a vegetative coma resulting from severe brain damage due to hypoxic encephalopathy. On July 22, 1999, he was transferred to Suburban Medical Center (private facility) for long term care. On May 23, 2000, Antonio Galvan died of complications due to hypoxic encephalopathy.

DAMAGES

If this matter proceeds to trial, the claimants will likely seek the following:

The Estate of Antonio Galvan-Ruiz	
Loss of Past Earnings	\$ 50,000.00
Past Medical Care	\$ 186,325.57
Leslie Galvan,	
Loss of Future Support	\$ 100,000.00
Loss of Care, Comfort and Companionship	\$1,000,000.00
Rafael Antonio Galvan,	
Loss of Future Support	\$ 100,000.00
Loss of Care, Comfort and Companionship	\$1,000,000.00
Funeral Expenses	\$ 3,000.00
Costs of Litigation	<u>\$ 50,000.00</u>
TOTAL	\$2,489,325.57

The proposed settlement includes:

Leslie Galvan, Loss of Care, Comfort and Companionship	\$108,459
Rafael Antonio Galvan, Loss of Care, Comfort and Companionship	\$108,459
Funeral Expenses	\$ 1,000
Attorneys Fees (MICRA Estimate)	\$ 65,416
Costs of Litigation	<u>\$ 16,666</u>
TOTAL	\$300,000

A portion of the recommended settlement may be directed by claimants to be used to purchase an annuity. The amount and structure of the annuity has not been selected at this time.

STATUS OF CASE

The current trial date has been vacated pending approval of this settlement.

The co-defendant, GE Clinical Services, which serviced the anesthesia machine, contends that County personnel, who also periodically inspected and maintained the anesthesia machine, were responsible for its failure. They further contend that under the terms and conditions of its agreement with the County, the County is expressly required to indemnify GE Clinical Services for acts and omissions related to the County's inspection and maintenance of the anesthesia machine, which would not be limited by the Medical Injury Compensation Reform Act (MICRA). GE Clinical Services, and Drager Medical, the manufacturer of the anesthesia machine, have collectively agreed to contribute an additional \$535,000 towards settlement of this matter, plus payment of the Medi-Cal lien in the amount of \$186,325.57, for a total of \$721,325.57.

This matter involved complex medical-legal issues surrounding the care and treatment rendered by medical personnel, including products liability and negligent maintenance theories against Drager Medical and GE Clinical Services. In addition to the normal discovery in such matters, it was necessary to take approximately thirty-five depositions, including the depositions of fifteen experts in anesthesia, anesthesia machinery and maintenance, and economics. Due to the inability of the parties to reach a reasonable settlement until right before trial, it was necessary for the County to be completely prepared for trial, including all motions, opposition to motions, exhibits, jury instructions, and witness preparation.

Expenses incurred by the County of Los Angeles in the defense of this case and prosecution of a cross-complaint against Drager Medical and GE Clinical Services through May 1, 2003, are attorneys fees of \$127,995.50 and \$50,961.51 in costs.

The total cost to the County of Los Angeles, as a result of this settlement, is as follows:

Indemnity (Settlement Amount)	\$300,000.00
County Attorneys Fees and Costs	<u>\$178,957.01</u>
TOTAL	\$478,957.01

EVALUATION

Medical experts will be critical of the approximate 20-minute delay by medical personnel on June 28, 1999, to recognize that Antonio Galvan's declining oxygen saturation levels might be due to a failure of the anesthesia machine to deliver oxygen and provide ventilation through the ET tube. This delay fell below the standard of care and is directly responsible for the results observed here.

We join with our private counsel, Stephan, Oringher, Richman & Theodora, and our claims administrator, Octagon Risk Services, Inc., in recommending settlement in the amount of \$300,000.

The Department of Health Services concurs in this settlement.